

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT EARL ALEXANDER,

Plaintiff,

v.

WARDEN BRIAN FOSTER, et al.,

Defendant.

ORDER

17-cv-861-jdp

On November 22, 2017, I entered an order directing plaintiff Robert Earl Alexander to submit an initial partial payment of the filing fee in the amount of \$8.94 due by December 14, 2017. On December 8, 2017, plaintiff filed a letter saying that he is unable to pay the \$8.94 initial partial payment, which I will construe as a request to waive the initial partial payment. Dkt. 19. Plaintiff's request will be denied without prejudice.

In plaintiff's letter, he indicates that he does not have sufficient funds in his prison account to submit the initial partial payment. However, plaintiff has not provided the court with documentation that shows the steps plaintiff has taken to request funds to pay the initial partial from the institution's business office nor has plaintiff provided the court with an updated trust account statement that shows plaintiff no longer has funds available to submit the \$8.94 initial partial payment. Furthermore, according to the language of 28 U.S.C. § 1915(b)(1), prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if plaintiff does not have money in his regular account to pay the initial partial payment, plaintiff is allowed to use funds from his release account to pay the initial partial. I will give plaintiff an enlargement of time until January 11, 2018, to pay the initial partial filing fee.

ORDER

IT IS ORDERED that:

1. Plaintiff Robert Earl Alexander's request for the court to waive the initial partial payment in this case, dkt. 19, is DENIED without prejudice.

2. Plaintiff may have an enlargement of time to January 11, 2018, in which to submit a check or money order payable to the clerk of court in the amount of \$8.94. If plaintiff does not have funds available from his release account to make the initial partial payment, plaintiff is allowed to use funds from his release account to pay the initial partial.

3. If, by January 11, 2018, plaintiff fails to make the initial partial payment, or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff's filing his case at a later date.

Entered this day 20th of December, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge